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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

—v.—

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board,

Respondent.

BRIEF OF THE CENTER FOR CONSTITUTIONAL RIGHTS AND THE LABOR COMMITTEE OF THE NATIONAL LAWYERS GUILD IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Center For Constitutional Rights and the Labor Committee of the National Lawyers Guild as amicus curiae respectfully submit this brief in support of

the Petition for Writ of Certiorari, and urge this Court to grant the Petition.

STATEMENT OF INTEREST

The Center For Constitutional Rights is a non-profit, tax exempt legal and educational corporation dedicated to advancing and protecting the rights and liberties guaranteed by the Bill of Rights to the Constitution.

Although the Center was born of the struggles of the civil rights movement in the south during the 1960's, its work has extended to many other important areas of civil rights and constitutional law.

In recent years the Center's work in widely publicized criminal cases has led it to be concerned with the right of a criminal defendant to trial by jury.

In addition, as a result of its representation of members of labor unions

throughout the United States and in Puerto Rico, the Center has been especially concerned with the rights of unions to a jury in criminal contempt.

The National Lawyers Guild is a professional association of more than 4,000 members. Since its inception in 1937, the Guild has actively supported those who are struggling against oppression. Throughout its history, the Guild as a whole has particularly made the legal representation of union and workers' organizations a high priority.

The Labor Committee of the National Lawyers Guild has as one of its purposes the task of addressing itself to important questions in the development of labor law which affect workers' demands, rights and actions.

We are, therefore, particularly interested in cases like the instant case.

A workers' right to a jury trial in a contempt proceeding, arising from an injunction in a labor dispute, is an issue of national implications, having an effect far beyond this particular controversy.

The Center For Constitutional Rights and the Labor Committee of the National Lawyers Guild, therefore, submit this amicus curiae brief as they have frequently done in similar cases, where the issues presented to the Court are of broad public significance.

PRELIMINARY STATEMENT

Petitioners have presented several questions to this Court for review regarding the decision of the court below affirming their convictions for criminal contempt. Amici will address themselves to only one of those issues - whether 18 U.S.C. §3962 provides a jury trial

for criminal contempt arising out of the Taft-Hartley Act.

18 U.S.C. §3962 states as follows in pertinent part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed. 18 U.S.C. §3692 (emphasis supplied)

In affirming petitioners' contempt convictions, the court below ruled that the statute provides a jury only for contempts arising out of the Norris-LaGuardia Act and not for "all contempts arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute." Amicus contends that in so ruling, the

court below ignored the plain wording of the statute,and therefore the intention of Congress,without any sound basis for its decision.

REASONS FOR GRANTING THE WRIT

I. THE ISSUE RAISED BY PETITIONERS CONCERNING THEIR RIGHT TO A JURY TRIAL IS ONE OF TREMENDOUS IMPORTANCE EXTENDING FAR BEYOND THIS CASE.

In asking this Court to review the decision of the court below, petitioners have brought before this Court the question of whether 18 U.S.C. §3692 provides a trial by jury in criminal contempt cases arising under the Taft-Hartley Act. This question is one of tremendous importance to unions not only throughout the United States, but in Puerto Rico as well. */

*/ The question is of such importance to unions today that unions representing workers in widely diversified industries joined together in amicus curiae before the First Ciruit in its consideration of the same issue. In Re Union Nacional de Trabajadores, No. 74-1073 in which the (fn. continues on next page)

The important protection of a jury trial in criminal contempts arising in a labor context was first established in 1932 with the passage of Section 11 of the Norris-LaGuardia Act. 29 U.S.C. 111. Jury trials were provided in order to protect the right of American working people to organize and was a direct response to "...the injustices and the abuse of power on the part of some of the federal judges." Statement of Rep. Fernandez, Cong.Rec. p.5513, 79th Cong., 1st Sess.

(fn. continued from preceding page)
United Electrical, Radio & Machine Workers of America (UE); the International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC; Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO; the International Longshoremen & Warehousemen's Union; The Gulfcoast Pulpwood Assoc.; District 65, Distributive Workers of America; Local 1199, Drug & Hospital Employees Union; Newspaper Guild of N.Y., Local 3, AFL-CIO; and Local 306, Moving Picture Machine Operators Union, IATSE, AFL-CIO, filed a brief amicus curiae arguing the applicability of 18 U.S.C. §3692 to criminal contempts arising out of the Taft-Hartley Act.

The provision of a jury in criminal contempts was expressly designed to end the situation in which the judge "...became the prosecuting officer, the jury and the judge all rolled up in one." Statement of Rep. Schneider, Cong.Rec. p.5515, 79th Cong., 1st Sess.

In 1947 the Taft-Hartley Amendments to the National Labor Relations Act were passed, reviving the use of injunctions against unions. The passage led to widespread vocal protest by the unions.

In 1948, aware of this protest by the unions, the Congress, in recodifying the Code of Criminal Procedure, re-enacted the jury provision previously contained in the Norris-LaGuardia Act and changed the wording so as to provide trial by jury in "all cases of contempt arising under the laws of the United States governing the issuance of injunctions or res-

training orders in any case involving or growing out of a labor dispute," 18 U.S.C. §3692, rather than only in "cases arising under sections 101-115 of [the Norris-LaGuardia] Act." 29 U.S.C. 111 (repealed).

In 1932 when the Norris-LaGuardia Act was passed, the National Labor Relations Board was the agency which protected developing unions from the excesses of employers and the courts. With the enactment of Taft-Hartley, it became the agency which initiates prosecutions for criminal contempt against unions for violations of injunctions. Indeed, this change in the role and function of the Board supports the argument that in recodifying 29 U.S.C. 111 the jury provision was broadened to account for the new powers of the NLRB to initiate proceedings which mightlead to criminal contempt. To interpret the recodification and broadening of language

of the statute otherwise, would render not only the changes, but the statute itself meaningless, since today virtually all criminal contempts arising out of labor disputes arise under the authority of the Taft-Hartley Act.

Finally, today the Board has been using its Taft-Hartley powers, including that of initiating criminal contempt, to harass and weaken unions which aggressively represent the interest of their members. The situation has therefore recently begun to resemble that of the early 1930's when Congress found it necessary to protect unions with the right to trial by jury in criminal contempt.

II. THE RULING OF THE LOWER COURT WAS WITHOUT SUPPORT AND WAS IN ERROR.

The decision of the court below is based on one argument - that providing a

jury trial for criminal contempt in cases arising under the Norris-LaGuardia Act would impliedly mean the repeal of Section 10(1) of the Taft-Hartley Act, 28 U.S.C. 160(1), which sets forth the procedure to be followed when an unfair labor practice has been charged.*/ In so concluding, the court relied on the cases of Brotherhood of Local Firemen & Enginemen v. Bangor & Aroostook R.R. Co., 380 F.2d 570 (D.C. Cir., 1967) cert. denied 389 U.S. 327 (1967); Madden v. Grain Elevator, Flour & Feed Workers, 334 F.2d 1014 (7th Cir., 1964); Schauffler v. Uni-

*/ Amici seek herein merely to urge this Court to grant certiorari and give full consideration to the issue of the interpretation of §3692. We therefore shall not present the entire range of substantive arguments supporting the view that §3692 provides a jury trial for criminal contempts arising out of the Taft-Hartley Act, but at this time will only address ourselves to the argument relied on by the Ninth Circuit below.

ted Assoc. of Journeymen, 230 F.2d 572 (3d Cir., 1956), cert. denied 352 U.S. 825 (1956); N.L.R.B. v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir., 1952).

Section 10(l) details the procedure to be followed by the board in initiating an investigation, and petitioning the court for injunctive relief pending the Board's final determination of the matter. In addition the section specifies the procedures to be followed in the court before any injunctive relief may be granted. The section is not concerned with the procedures to be followed should the party enjoined allegedly violate the injunction. Thus the provision of a jury trial when a party is charged with criminal contempt for allegedly violating an injunction was at best of indirect relevance to the operations of section 10(l). If anything, the existence of

10(l) and its provision for Board injunctions against unions indicates the need for the safeguard of a jury trial when allegations arise concerning violations of those injunctions. In addition, as the court below concedes, the authorities it cites in support of its conclusion "pertain principally to civil contempts" and therefore their discussions of §3692 are merely dicta.*/

*/ The cases relied on by the court below are distinguishable and provide inadequate basis for the court's decision for other reasons as well.

Brotherhood of Locomotive Firemen & Enginemen, supra, after holding §3692 inapplicable to civil contempts merely notes that §3692 is a recodification of §111 and does not apply to contempts arising out of the Railway Labor Act - an act clearly not at issue here.

Red Arrow Freight Lines deals with the unique situation of a contempt of an order of the Court of Appeals and turns on whether the Court of Appeals had jurisdiction over the contempt if it could not provide a jury trial.

Madden, supra, relies on 29 U.S.C. 160(l) which expressly states that the jurisdiction of the District Court to issue and enforce injunctions and to en-

(fn. continues on next page)

In contrast, in a Petition for Mandamus of the Union Nacional de Trabajadores concerning the interpretation of §3692 the First Circuit has stayed a trial for criminal contempt pending its consideration of the question and has ordered a reply by both the United States Attorney

(fn. continued from preceding page)

force orders of the NLRB shall not be limited by the provisions of the Norris-LaGuardia Act, 29 U.S.C. 101-115. In a direct contrast to that express limitation, §3692 expressly broadens the reach of the jury provision. What is more, §160 (1) does not relate in any way to criminal contempts arising out of injunctions. Rather, it regulates the jurisdiction of the court sitting in equity only.

Finally, the Third Circuit opinion in Schauffler cited by the court below does not even reach the question of § 3692. It was discussed in the opinion of the District Court which held §3692 inapplicable to civil contempts. In addition, the District Court sought to differentiate between labor disputes and unfair labor practices. The error of using any such distinction as the basis of a limitation of the right to trial by jury under §3692 is discussed by Petitioners. Their arguments are fully supported by amici and therefore will not be repeated herein.

and the NLRB to the petition. In Re Union Nacional de Trabajadores, No. 74-1073. That court must see the issue as a substantial one in spite of the ruling of the Ninth Circuit below, for although it has had all papers of the parties before it since April 17, 1974 (and has stayed the criminal trial since March 15, 1974) at the date of the submission of this brief it has still not ruled.

CONCLUSION

Only this term this Court has reaffirmed the importance of the guarantee of jury trials in the context of civil litigation. United States v. Williams, ___ U.S. ___ (1974) 42 LW 2606. The guarantee of a jury trial in a criminal context is of equally great if not greater importance whether that guarantee be based on the constitution or statute.

Since a jury trial is of such cri-

tical importance to working men and women today and since the decision of the court below is based on such meager and inappropriate foundation, amici urge this Court to grant the Petition for Certiorari herein and give full consideration to this question of the applicability of 18 U.S.C. §3692.

Respectfully submitted,

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